

State of the Process,

The Provost and Town-council of *Perth*,

A G A I N S T

The Lady *Gray*, *alias Blair of Kinsfauns*, and *John Lord Gray*, her Husband; *Alexander Clunie*, and *James Duncan*, Merchants in *Perth*.

THE Pursuers, as standing infest in the Salmon-fishings around and upon every Part of the Island of *Sleples*, within the Water of *Tay*, conform to their Seasin produced; by virtue whereof they, having good and undoubted Right to the said Fishings, insist in an Action of Declarator, That it may be found and declared, that they have been in peaceable and uninterrupted Possession thereof, as their peculiar and uncontroverted Property, past Memory of Man; and that not only by fishing thereon around the said Island, but also by debarring and secluding all others therefrom, and from having Access or Share therein: Yet the Defenders, and others in their Name, of their causing and hounding out, clandestinely put on Fishing-boats, and fished with Nets upon the said River of *Tay*, opposite to the North-side of the Island of *Sleples*, upon the Lead and Water belonging to the Pursuers, and damnified them in the Sum of 500 Merks *Scots*: And conclude, that it ought to be found and declared, that the Fishing upon the Lead or Channel of the Water interjected betwixt the said Island and the opposite North-bank of the said Water of *Tay*, is the proper, peculiar, and uncontroverted Property of the Pursuers; and that they and their Tenants have been in the constant and immemorial Possession of the same, not only by fishing thereon, but also by secluding and debarring others therefræ; and that the Defenders be decerned to pay the said 500

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Merks of Damages, and 100*l.* *Sterling* of Expences, and ordained to desist and cease from fishing therein in time coming.

Act, p. 54. at A. At calling, the Lords, on Report, found, " That the Town
" of *Perth*, Pursuers, have the only exclusive Right of fishing
" upon the Lead or Channel of the River interjected betwixt
" the Island of *Sleples* and the opposite North-bank of the River
" of *Tay*; and that the Defenders have no Right to fish in that
" Part of the River; and decerned and declared accordingly."

p. 101. at B. Upon a reclaiming Petition for the Defenders, and Answers
for the Pursuers, the Lords, " before Answer, allowed the
" Defenders to prove, that they can use their Fishing, and
" fish, in virtue of their Rights, without interfering with or
" prejudging the Town of *Perth*'s Fishing; also to prove any
" Facts or Circumstances for clearing thereof; And allowed
" the Pursuers a conjunct Probation thereanent; and ordained
" a Plan to be made out of the Banks and *alveus* of the River,
" upon the joint Expence of both Parties."

p. 104. at C. Thereafter, upon a Petition given in for the Pursuers, the
Lords " authorised and appointed *Thomas Winter*, Artist in
" *Muthill*, to make a Plan of the Banks and *alveus* of the Ri-
" ver, adjacent to the Fishings in question, upon forty-eight
" Hours Notice to be given to both Parties, that they might
" attend, and point out the Places of which the Plan was to
" be made, and their Names; and appointed the said *Thomas*
" *Winter* to produce the Plan to the Commissioner after-named,
" before taking the Proof above-mentioned, that the Witnesses
" might be examined agreeable to the said Plan: And granted
" Commission to, and authorised the Sheriff-depute of the
" Shire of *Perth*, to take the said *Thomas Winter*'s Deposition
" upon the Veracity and Justness of the said Plan so to be made
" out by him, before taking the said Proof; and thereafter
" to take and receive the Oaths and Depositions of the Wit-
" nesses to be adduced by either Party, for proving the Points
" above mentioned, admitted to their Probation by the fore-
" said former Interlocutor; and that upon the Ground in dis-
" pute; assigned a Day for reporting, and granted Diligence."

There.

There is produced for the Pursuers, A Transumpt, under the Great Seal, of a Charter by Robert King of Scots, to Aldermen, Burgesses, and Community of the Burgh of Perth, *cum insulis nostris jacentibus infra aquam de Tay, viz. Le Lubbe de Incherit, Insharry, & Sleples, & cum omnibus piscariis nostris ad illas insulas pertinentibus, circumquaque ex omni parte & utrobique ac qualitercunque adjacentibus, & adjacere quomodo libet valentibus in futurum, cum piscatura unius retis insule Regie, & cum omnibus aliis piscariis nostris insularum, &c.* Datum apud Dumfermlyne, 23. die Julii, anno regni nostri quarto, per copiam transumptam de registro, ad instantiam dictorum Præpositi, burgensium, & communitatis burghi de Perth, sub magno sigillo Serenissimi Principis ac Domini D. Jacobi Secundi, Dei gratia, Regis Scotorum Illustrissimi, apud Edinburgh, 25 die mensis Octobris, anno regni præfati Regis Jacobi septimo. Item, A Charter under the Great Seal, dated 15th November 1690, in favours of the Provost, &c. of Perth, of all and hail the said Burgh of Perth, with the Islands lying in the Water of Tay, viz. Law of Incherat, Incherray and Sleples, with all the Fishings belonging to the said Islands round and on all Sides adjacent thereto, with the Fishing of one Ner on the King's Island, and with all other Fishings of the Islands of the said Burgh of Perth. Item, An Instrument of Seasin, the 13th of February 1601. Item, Instrument, dated the 17th of June 1742, taken by one of the Baillies of Perth, against John Inrie and Thomas Sanders; who were then fishing in the River Tay on the North-side of the Inch of Sleples. Item, Another Instrument, dated 20th June 1745, interrupting Patrick Rutherford and others in making a Shot or Draught on the North-side of the said Inch of Sleples.

There was produced for the Defenders a Charter under the Great Seal, in favours of Anne Blair of Kinfauns, and her Husband, of all and hail the Lands and Barony of Kinfauns, with the Fishings of Salmon, and other Fishings in the Water of Tay; and of all and hail the Lands and Barony of Craigton, and the Fishings of the said Lands, commonly called Pillgart-beugh, Cambuspool, and Crook, with all other Fishings, as well Salmon as other Fishings, upon the Water of Tay, which of old

old belonged to the Abbacy of *Scone*, betwixt the *Wood-dike* of *Kinnoul*, and the Bounds and Marches of the Lands of *Little-Seggiden*, and certain other Lands and Fishings therein mentioned: Which Charter is dated the last of *February* 1673.

The Pursuers extracted an Act and Commission, and Diligence; and caused execute the same against several Witnesses; who compeared before Mr. *James Erskine*, Sheriff-depute of *Perth*, and deponed as follows:

Wit. 1. p. 2. *James Robertson* in *Grange of Elcho*, aged 32, deponed, That he has known the Fishings in question these eight Years. That he has himself been Sub-tacksmen of the *Sleples* Fishing these seven Years, and is so now. That, during that Time, the *Pyroad* Fishing, belonging to my Lord *Gray*, has been fished in the same Manner it is fished at this Day. That now and then my Lord *Gray's* Fishers have been obliged to clean the Ground, by taking out Stones; which was of considerable Use to them: but that he thinks the Fishing of *Sleples* was neither the better nor the worse of that cleaning of the Ground. That the *Pyroad* Fishing begins later in the Season, as well as later in every particular Tide, than the *Sleples* Fishing. That the *Pyroad* Fishers have for two Years past been in the Use of going with the same Boats, first to the *Hempsdam* in the Beginning of the back-going Tide, and there to continue 'till some time before the Tide was quite out; when they came down to the *Pyroad*, where they remained 'till some time after the Tide began to make; and then returned again to the *Hempsdam*. That formerly the *Hempsdam* was in use to be fished by the Boats that came up from a Fishing called the *Tapie*, belonging to Lord *Gray*, lying a little below the *Crookhead* Fishing. Deponed, That he thinks the Fishing of *Sleples* does suffer some Prejudice by the Fishing of *Pyroad*. That he has observed the *Sleples* Fishers generally took more Fish before the *Pyroad* Fishers came on, than afterwards in the same Tide. That he thinks the *Sleples* Fishers might make their Shots more frequently, if there was no Fishing at the *Pyroad*: That the second Boat of the *Sleples* Fishing

Fishing cannot well begin her Shot before the first Boat's Net is hauled in, unless it is to catch a Warp of Fish which they see in the Water; and that it would frequently be their Interest to be somewhat later of setting out, in order to allow the Fishes that may have been scarred by the other Net, to return into the Lead, and gather there, especially when the Water is clear: But that, in order to keep pace with the *Pyroad* Boats, which would otherwise come in before them, they are obliged uniformly to set out as soon with their second Boat as they think the first Boat and her Nets will be out of the way. *Deponed*, That he has known, at several times, when a Warp of Fish appeared in the Water, the *Pyroad* Fishers, when they saw the *Sleples* Fishers coming out, rowed in before them, and drew that Part of the Water before the *Sleples* Fishers could come at it, although it was out of their turn. *Deponed*, That sometime after the Tide turns, the Fishers of *Sleples* generally begin at the nether Shot, where they continue 'till about low Water; that they go up to the upper Shot, sometimes with one, and at other times with both their Boats, where they continue 'till the Tide drives them off. *Deponed*, That sometimes when the Water is foul or thick, one of the Boats goes down to *Little-Girdum*, and makes some Shots. *Deponed*, That before the *Pyroad* Boats began to fish in the *Hempslam*, they generally used to fish some time later every Tide than the Fishers in the nether Shot of *Sleples*; and that they did so last Year, after they came down from *Hempslam*; but that they have seldom fished this Season at the *Pyroad*, except upon Trial, at the Desire of some People from *Perth*. *Deponed*, That, in regard to the Tide-shot, the Fishers were in use to fish Shot and Shot about, and each to come within the other's Shot; so that they could not both fish there at the same time. That the Deponent was present on *Friday* last, when he saw the Fishers from each Side of the Water fish the Tide-shot; that they fished at the same time, but did not interfere one with another, as they used to do; and that the Fishers from the *Pyroad* did not set up so far up, nor stretched so far over, as they used to do; but that the

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Sleples Fishers took the same Course they used to take. *Deponed*, That when the *Sleples* Boats are fishing at the nether Shot, the *Pyroad* Boats set out sometimes before the *Sleples* Boat has hauled in her Net, and at other times not 'till after it is hauled in. *Deponed*, That he has known the *Sleples* Boat sometimes obliged to lie by, for fear of breaking her Nets, by running foul of the *Pyroad* Boats, which had just set out before her; although that *Sleples* Boat had not set out 'till the other *Sleples* Boat had hauled in her Net, and put it on. *Deponed*, That, though he is a Sub-trackfinan, he does not use to fish it himself, except when some of his Servants are sick. And this is the Truth, &c.

Wit. 2. p. 6. *John Imrie* in *Orchardnuck*, aged 52 Years, one of the Sub-trackfinan of the Fishing in the Island of *Sleples*, *deponed*, That he thinks the *Pyroad* Fishing does some Prejudice to the *Sleples* Fishing; because that he has observed, that the *Sleples* Fishers got more Fish generally when the *Pyroad* Fishers did not fish, than when they were fishing Shot and Shot about with them in the common Way: That he thinks the *Sleples* Fishers could not make more Shots, or use more Boats, suppose the *Pyroad* Boats were not there: That the general Rule observed by the *Sleples* Fishers, is, for the second Boat to set out from the Shot-head, when the first Boat's Net is hauled in, or at least as soon as the Net-staff is laid on the Stern; and that he thinks, between the Shots of the first and the second *Sleples* Boats, the *Pyroad* Boats might have Time to make two Shots, as theirs are much shorter than those of *Sleples*; but that this would be a Prejudice to the *Sleples* Fishers: That the *Sleples* Fishers generally regulate the Motions of their one Boat by the other; but, at the same time, they have some Regard to the Motions of the *Pyroad* Boat on the other Side, because they must take care not to run foul of one another; and, at the same time, in order to preserve good Neighbourhood, they are not very anxious, though the Boat of the one-Side should take a Shot more than the Boat on the other Side: That, when the Water is clear, and there is a little Gale of Wind, it is an Advantage to both Sides to rest a little betwixt the Shots, because the Fish are then easily scarred; and that

that the *Sleples* Fishers, when they have rested long enough, frequently called to the *Pyroad* Fishers on the other Side to come off in their Turn, otherwise they would do it; and have accordingly done it, without being prevented or stopped by the *Pyroad* Fishers: That the *Pyroad* Fishers, by their Situation, being nearer the Stream and the Depth, when the Boats of each Side set off about the same time, the *Pyroad* Boats, as they have shorter Way to go, make their Sweep first, which obliges the *Sleples* Fishers to lie by a little, till they be out of their Way; and this he has seen happen frequently; but that they generally keep so good Neighbourhood with one another, that they seldom or never strive with one another for Shots; so as to incommode each other, except when they happen to see a Warp; in which Case the *Pyroad* Fishers take the Advantage of their Situation. *Depones*, with respect to the Tide-shot, That, in the Beginning of the Tide, or when they come first to work at that Shot, for the first two or three Shots, the Boats on the opposite Sides set out in a Line, and fish in such a Direction, that both the Nets cannot be in the Water at the same time; so that, to prevent their interfering, they take Shot and Shot about: But that, when the Tide grows a little higher, the *Pyroad* Fishers set off a little further down; by which means, and by the Water's growing broader by the Tide, the Shots are free of one another; so that they can fish independently, and without regard to one another's Motions; and by that means the Boats come along-side of one another, and the Backs of the Nets come very near to one another, as represented in the Map; but that this is the Case only for two or three Shots, because the Tide drives the *Sleples* Boats off that Shot, that they cannot work any more, tho' the *Pyroad* Boats continue there longer. *Deponed*, That, as far back as he remembered, the *Sleples* Fishers fished in the same Way they do now, and made as long and as broad Shots as they do yet; and that the *Pyroad* Fishing occasioned no Alteration, neither did they find any Advantage by the Stones being taken out by the *Pyroad* Fishers; and that it neither saved their Nets, nor gave them:

them a longer Draught. *Deponed*, That the *Sleples* Fishing paid at former Times no more than 800 Merks: That, about the Time the *Pyroad* Fishing was set a-going, it had been raised to 1200 Merks; and that it now pays 1400 Merks: That the other Fishings in the *Tay* had likewise risen in the same Proportion; and the Deponent believes this was owing to the great Increase of Fish. And, being interrogate for the Defenders, *deponed*, That the *Pyroad* Boat may set off as soon as the *Sleples* Boat begins to haul in their Head-rope; but that they do not always so, but regulate their Motions according to the Quantity of the Fish, and the Circumstances of the Water. *Deponed*, That, when the *Pyroad* Fishing was set a-going, the Deponent, and the other seven Sub-tacksmen, being informed, that the principal Tacksmen had retained a Part of the Tack-duty in their own Hands from the Town of *Perth*, insisted with the principal Tacksmen, that they should communicate that Ease to them which they had got from the Town, on account of the Damages sustained by the *Pyroad* Fishing; but that, at that time, the principal Tacksmen gave them no Allowance: But that, when their last Tack expired, which was about two Years ago, each of the eight Sub-tacksmen, of which the Deponent is one, got a Guinea from Mr. *Duncan*, the principal Tacksman, for the Damage sustained by them thro' the *Pyroad* Fishing during the Currency of that Tack, which was three Years: But that with regard to the present Tack, of which there is yet a Year to run, besides the current Season, they have had no Communing upon that Head with the principal Tacksmen, nor any Obligation granted to them upon that account; but that they expect at least as much Ease on this Tack as they had on the last. *Causa scientie*, The Deponent is not only Sub-tacksman, but has for thirty Years bypast fished himself in the Fishing of *Sleples*, and continues to do so still when his Health allows him. And this is the Truth, &c.

Wit. 3. p. 11. Robert Imrie in Mill of Grange, aged 30 Years or thereby, *deponed*, That he thinks the Fishing at *Sleples* does suffer some Prejudice by the Fishing at the *Pyroad*; first, because the oftener the

the Water is fished, it is the worse for the Fishing; and in the next Place, because the *Sleples* Boats are sometimes obliged to lie by, and wait till the Boats on the other Side have made their Shot: And further, he has observed, that they have generally taken more Fish when the *Pyroad* Boats were not there, than when they fished Shot and Shot about, in the usual Form. *Deponed* conform to *John Imrie* as to the Tide-shot. And further *deponed*, That, on *Friday* last, when the Tide-shot was made in presence of Mr. *Winter*, the Fishers of the *Pyroad* Side did neither come so far up, nor so far over as they used to do. And *deponed*, That his Father was Tacksman before him of the Fishing of *Sleples*; and that he himself got from Mr. *Duncan* a Guinea, and believes that each of the other seven Tacksmen got the same, for the Damage they were supposed to have sustained during their last Tack, by the Fishing at the *Pyroad*, which Tack was for three Years preceeding the Date of the present Tack; and that they have as yet got no Allowance from the present Tacksmen upon that Head, nor any Promise; nor have had any Communing upon the Subject. *Causa scientie*, That he has been a Fisher upon the North-side of the Island of *Sleples* ever since he was seventeen Years of Age; and that he is just now one of the present Subtacksmen. And being further interrogate, *deponed*, That ever since he knew the Boats of *Sleples*, they used to take as wide and as long a Shot as they do at this Day; and that any Stones that was taken out by the *Pyroad* Fishers were of no Use to the Fishers of *Sleples*; that is, that the cleaning of the *Pyroad* Fishing has been of no Use to the *Sleples* Fishing. And this is the Truth, &c.

John Barclay in *Westertoun* of *Elcho*, aged 57 Years, *deponed*, That he thinks the Fishing at the *Pyroad* neither stops nor hinders the Fishing at *Sleples* from working the same Way they would do if there was no Fishing at the *Pyroad* at all, in respect that they could neither have more Boats, nor shoot oftener than they do. *Deponed*, That sometimes when the Water is clear, it might be of Use to rest a little; but that, when the Boats are on upon both Sides, the Nets are close in the Water.

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Wit. 4. p. 13.

And further *deponed*, That he reckons it must be a Disadvantage to any Fishing, to have another Fishing to sweep the same Lead; because that the oftener the House is swept, it must be the cleaner. *Deponed*, That, within these seven or eight Years, Lord Gray's People have been at some Pains to clean the *Py-road* Fishing: But that he does not think this has been of any Advantage to the *Sleples* Fishers; for that their Nets took in the same Ground before, that they do yet; and that the Places that were dangerous and hurtful to them are so still. *Deponed* conform to *John Inrie*, a preceeding Witness, as to the Ease obtained or sought for the Damages sustained through the *Py-road* Fishing. *Causa scientie*, That he has always lived in the Neighbourhood, and has been one of the Sub-tacksmen of the Fishing on the North-side of the *Sleples* Island for these twenty-six Years bypast, and is just now one of the present Sub-tacksmen. And this is the Truth, &c.

Wit. 5. p. 14. *David Comb* in *Grange of Elebo*, aged 49 Years, *deponed*, That he knows, within these seven or eight Years, the Fishers at the *Pyroad* of *Kinfauns* have taken out a great many Stones, in order to clean the Ground of the *Pyroad* Fishing; but that he does not think the Fishing at *Sleples* has been any thing the better for it; for that, before these Stones were taken out, they used to come as far over, and go as far down the Water with their Shot, as they do still. *Causa scientie*, That he has, for twenty Years past, constantly been a Sub-tacksmen of *Sleples*, except for three Years; and that he is at present one of the Sub-tacksmen of the *Sleples* Fishing.

Wit. 6. p. 15. *Thomas Richardson Baker* in *Perth*, aged 40 Years and upwards, *deponed*, That from *Martinmas* 1741 to *Martinmas* 1744, the Deponent had a Tack from the Town of *Perth* of all their Fishings upon the Water of *Tay*, except the fourth Shot of the *Ships*, in Company, or for the Behoof of *Baillie Ross*, *Mr Feishney*, *Walter Keir*, and *William Ranken*, though the Tack is only in his own Name; and that the Deponent, of these Years, retained in his own Hands about 500 Merks of the Tack-duty, on account of an Incroachment that was

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was made upon one of the Town's Fishings, of which the Sub-tacksmen complained to them: That *John Ross*, Merchant, being Clerk to the Company, the Deponent did not inquire particularly into the Business, which was generally managed by their Clerk; and therefore does not particularly remember upon which of their Fishings the Incroachment was made, or whether the Sub-tenants were allowed any Deductions by them. Deponed, That the Magistrates never gave them any particular Allowance to keep the Money; but that they chose to do it for their own Security. And this was the Truth, &c.

Robert Ross Merchant, late Baillie of *Perth*, aged 63 Years, Wit. 7. p. 16. deponed conform to *Thomas Richardson*, the preceeding Witness, as to the Tack of the Town's Fishing from *Martinmas* 1741 to *Martinmas* 1744; and likewise, that the Tacksmen retained about 500 Merks in their Hands; with this Addition, That the Damage they alledged to have been sustained by them was by an Incroachment upon the Fishing of *Sleples*, by a Fishing set up opposite to it by *Lord Gray*; and that their Fishers complained of this Incroachment; and they were actually obliged to set the *Sleples* Fishings at a lower Rate than otherwise they intended to have done, upon that Account.

John Ross Merchant in *Perth*, aged 26 Years, deponed conform to *Thomas Richardson* and *Robert Ross*, the two preceeding Witnesses; with this Particularity, That it was the Fishing of *Sleples* upon which the Incroachment was made by the *Pyroad* Fishing belonging to *Kinfauns*; and that, on account of that Incroachment, the said Fishings were set 200 Merks lower for the Year 1742; and, for the same Reason, the principal Tacksmen bound themselves to give the Fishers at *Sleples* 40 *d.* more upon the Score of the Summer-fish than they could have have done otherwise. And further deponed, That, some Years ago, he gave in a particular Condescendence, to some of the Magistrates, of the Damages for which they retained the 500 Merks in their Hands. *Causa scientia*, That he was Clerk to the said Company.

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Wit. 9. p. 18.

John Robertson of *Tullibelton*, late Provost, and present Counsellor of the Burgh of *Perth*, aged 40 Years and upwards, deposed, That he, with *James Duncan* and some others, had a Tack of the Island of *Sleples*, and several others of the Town's Fishings, from the Year 1744 to the Year 1747; and that they retain in their own Hands L. 40 Sterling of the Tack-duty, for which the Town have not as yet done Diligence against them; and that the Reason of their retaining that Sum was, because they believed themselves damaged towards that Extent by the Incroachment that was thought to be made upon the *Sleples* Fishing by a Fishing being set up on the *Kinfauns* Side opposite to it; and that they had great Complaints from the Sub-tacksmen about it; but that they have not as yet settled what Ease they are to allow them.

Wit. 10. p. 19

James Duncan Merchant in *Perth*, aged 26 Years and upwards, deposed alike to *John Robertson*, the preceeding Witness, *in omnibus*. And further deposed, That he believes the same Sub-tacksmen which are now at the Fishings of *Sleples* were likewise the Sub-tacksmen under him and the former Tacksmen.

And the said Defenders having likewise extracted an Act and Commission, and Letters of Diligence, caused cite several Witnesses; who compeared before the said Mr. *James Erskine* above named, and deposed as follows:

Wit. 1. p. 2.

Andrew Jack Cottar in the Burn of *Kinfauns*, aged 26 Years or thereby, deposed, That the Fishers of the Town of *Perth's* Fishing on the Island of *Sleples*, opposite to the *Pyroad* Fishing belonging to *Kinfauns*, have formerly, and do now use only two Boats and two Nets; and that the Deponent thinks they could not make Use of more, unless the others were to lie idle; nor would they be able to employ any more, although Lord *Gray's* Fishers did never fish at the *Pyroad* on the opposite Side. Deposed, That when the Water grows too low for fishing opposite to the *Pyroad*, so that it is not in ply, they sometimes take one of their Boats down to *Little-Girdum*,
a little

a little above the other *Girdum*, as marked in the Map or Plan, and the other up to the upper Shot of *Sleples*, as marked in the Map; and at other times they take both their Boats to the upper Shot; and, at these Places, they continue to fish till the Water be filling again; when they return to the Tide-shot, and fish there for about an Hour. *Deponed*, That Lord Gray's Fishers at the *Pyroad* make Use only of two Boats and two Nets; and that he thinks they could not make Use of more Boats, without either interfering with the Town of *Perth's* Fishers, by coming in before them while they are making their Shot, or putting themselves to needless Trouble, by coming in upon the Back of their own Nets. But *deponed*, That as Lord Gray's Nets, as well as the Shots themselves, are much shorter than those of the Town of *Perth* on the opposite Side, he believes it might be possible for them with these two Boats to make three Shots for the Town of *Perth's* two, without hurting the Town; and that they have not been in use to do this, because he is not certain if it would be of much Profit to them. *Deponed*, That when the *Pyroad* Fishers begin to draw their Nets ashore, the Net is drawn from the shallow Ground on the *Sleples* Side of the Depth, in towards the Depth, which lies near the *Pyroad* Side of the Water; by which Means they lose many Fish, as their Net is drawn from the Shallow to the Depth, and does not go to the Bottom of the Water: But, on the other hand, that the *Sleples* Nets being drawn from the Depth towards the Shallow, the Fishes that are once inclosed, cannot well escape, the Bottom of the Net being always close to the Ground. *Deponed*, That there is a Current towards the *Kinfauns* Side where the Depth is. *Deponed*, That the uppermost Stone, marked N^o 9. in the Map, is smooth, and shelves towards the South; but has a rough and abrupt perpendicular Face towards the North: by which means the *Sleples* Nets dare not surround it, for fear of being caught and tore upon it; whereas the *Pyroad* Nets, which surround it on the South-side, can without any Danger be drawn over it, as it is smooth on that Side. *De-*

poned, That the second *Sleples* Boat sets out upon her Shore for the most part after the Net is begun to be laid on again upon the first Boat; Or, if the first Boat has happened to take a great many Fish, then the second Boat sets out as soon as the Staff of the Net is put upon the Stern of the first Boat; and that the second Boat cannot set out sooner, without harming themselves; because the first Net having swept the Ground so recently before the coming of the second, they could not expect to take any Fish, they having been either taken or scarred by the first Net. And further *deponed*, That if the second Boat was to set out sooner, they would hurry one another, and might run foul; and this would not be remedied by their employing a greater Number of Hands. And *deponed*, That the *Sleples* Fishers are in use to regulate the Motions of their second Boat by their own first Boat, without regard to the Fishing-boats of *Kinfauns*. *Deponed*, That, according to the common Method and Course of Fishing, the *Pyroad* Boats do no way hinder or stop the *Sleples* Boats in their Way of working, or making their Shots; for that the *Sleples* Boats make as many Shots, and fish as fast as they could do, and take in as great a Compass as they could do, if there was no Fishing upon the *Pyroad* Side: And that, though the *Pyroad* Nets, by taking in the same Ground that is comprehended within the Shots of the *Sleples* Boats, may possibly take or scar some of the Fish; yet those Fish which are taken, would probably have run up before the *Sleples* Nets could have come about; and the Fish which are scarred, would only run down the Depth a little, and probably might return into that Ground again before the *Sleples* Nets could come up. That, on the other hand, when the Fish are scarred by the drawing of the *Sleples* Nets, which are drawn in towards the shallow Ground, they will naturally take a different Course, and run a greater Way before they will return again; because they fly towards the Depth, which is nearer the other Side of the Water. And further *deponed*, That the Fish do not lie where there is a Stream. *Deponed*, That he knows the *Pyroad* Fish-
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ers have fished in the same Way they just now do for five or six Years past, except that they were interrupted one Year by the Foulness of the Ground, which prevented them from fishing so often as they were wont to do; but as often as they did fish, it was in the same Method. That about that Time the Ground was cleaned. That the cleaning of the Ground was of use to the *Sleples* Fishing, in regard that their Nets were formerly often tore and broke; but now they come both further over and further down, without being in any Danger, except from the Stone above mentioned. That the Deponent knows there are several Places of the Water of *Tay*, where the Heritors on the opposite Sides fish Shot and Shot about; and that in some of these the Water is narrower than it is betwixt *Sleples* and the *Pyroad*, to wit, between the *Weel of the West* and the *Clips*, the *Langsands* and *Hastebemhome*, and the East and West Sides of the *Willowgate*. *Causa scientie*, That he is a Fisher to his Trade, has lived in the Neighbourhood all his Life, and was employed two Years ago, for twelve Months together, that is, a Season, in fishing the *Sleples* Fishing.

Mr. *Burnet*, for the Defender, insisted, That the Witness should be asked, If he knew of any new Fishings that were set up of late?

It was objected for the Pursuer, That it was not within the Interlocutor: That the Answer could have no Tendency to prove whether the *Pyroad* Fishing was prejudicial to the *Sleples* Fishing or not.

The Commissioner, having considered the Question, with the Objection, sustained the Objection, in regard that the Interlocutor allows only a Proof to the Defenders, That they can use their Fishing, and fish in virtue of their Rights, without interfering with or prejudging the Town of *Perth's* Fishing, and of any Facts or Circumstances for clearing thereof.

Alexander Brown in *Kirkstyle of Kinfauns*, aged 30 Years or Wit. 2. p. 7. thereby, deponed, That the *Pyroad* Fishing does not, in his Opinion, interfere with or hurt the Town of *Perth's* Fishing upon *Sleples*. That the deep Lead being much nearer the *Pyroad*

road Side than the *Sleples* Side, the *Pyroad* Fishers have much shorter Nets, and take smaller Shots; by which means they can not only take Shot about, but sometimes more, without stopping the *Sleples* Fishers; who must take a great deal longer Time, as they have longer Nets and make a much larger Compass. Deponed, That the *Pyroad* Boat, tho' she does not begin to make her Shot 'till the first *Sleples* Boat has drawn in her Head-rope, and is ready to haul in her Net, can very well finish her Shot before the second *Sleples* Boat comes off from the Shot-head; and that the second *Sleples* Boat generally sets off from the Shot-head when the first has hauled in her Net, or when the Net-staff is laid upon the Boat's Stern to be laid on again: For which Reason he thinks, that the *Sleples* Boats need never be stopped, or be obliged to lie by, on account of the *Pyroad* Fishers making their Shot. That if the Fishers on each Side have a mind to be contentious, and strive with one another, they may no doubt put each other to Inconveniencies, either by lying by unnecessarily, or stepping in before one another invidiously; but that the Deponent does not remember to have seen this happen while he was concerned in the *Pyroad* Fishing. That he has sometimes seen the *Pyroad* Fishers make two Shots for one of the *Sleples* Fishers: The Reason of which he believed might be, That, when the Fish are not plenty in the Water, as the *Pyroad* Fishers have a much shorter Shot, they can do it with less Trouble to themselves or Damage to their Tackle, than the *Sleples* Fishers; who, as they have a very long Shot, are not so fond of making it, unless they think there is Fish going in the Water. And further deponed, That, about seven Years ago, the *Pyroad* Fishing was begun to be cleared. That ever since, from time to time, they have been taking Stones out of it. That he thinks this cleaning has been of use to the *Sleples* Fishing, in regard that they can make a larger Shot by going further down than formerly, tho' they go no further over, without running any Hazard of tearing their Nets so often as they used to do before the Water was cleaned on the *Pyroad* Side. Deponed, with regard to the Tide-shot, That they have

no occasion to come in within one another's Shot: First, Because the Water is broader at that Time; and, secondly, Because the *Sleples* Shot is a little above the *Pyroad* Shot: By which means it is a Matter of Indifference to the Fishers on the one Side, whether the others are there or not. And the Deponent has frequently seen the Boats on both Sides set out at the same time; and when they were at their utmost Stretch, the Boats would be near along-side of one another; and were separated gradually, by the Tide making the Water broader: For which Reasons at the Tide-shot they do not use to observe the Rule of Shot and Shot about, as they did at the other Shots. And deponed, That *Sleples* Fishing has an Advantage over the *Pyroad* Fishing, which is opposite to it, in respect that the *Sleples* Nets are drawn from the Depth into the Shallow, which is always a sure Fishing; whereas the *Pyroad* Nets in some Part of the Shot are drawn from the Shallow into the Depth, which is much more uncertain. Deponed, That, in several other Places in the Water of *Tay*, the opposite Fishings fish Shot and Shot about, where the Water is as narrow or narrower, than on the North-side of *Sleples*, to wit, in the *Willowgate*, the *Ford* and the *Stone-dike*, the *Weel of the West* and the *Clips*. *Causa scientiæ*, That he lives in the Neighbourhood of the Fishings in question; was a Fisher in the *Pyroad* for a Season, three Years ago; and before that fished ten Years under his Father at *Stockgreen*, which is a little above the Island of *Sleples*.

Mr. *Burnet*, for the Defenders, offered to prove by Witnesses present, that the Heritors of *Kinfauns* were in use to exercise their Right of the Fishing in the *Pyroad*, and other Parts of the Fishing in Controversy, in ancient Times.

To which the Provost of *Perth* objected, That the Commissioner has, by the Act, no Power to take a Proof of any Facts and Circumstances, but such as tend to clear that single Point, Whether the Exercise of the Right of Fishing at the *Pyroad* interferes with, interrupts, or any ways hurts the Town of *Perth's* Fishing on the North-side of the Island of *Sleples*? and there-

fore that the Defenders cannot *in hoc statu* be allowed to prove their Possession, as that could only tend to found them in a Claim of Prescription, but by no means to clear the Point admitted to Proof.

Which being considered by the Commissioner, he sustained the Objection, and refused to receive the Witness.

Wit. 3. p. 12

Alexander Imrie, Cottar in *Cottartoun of Kinfauns*, aged 40 Years, *deponed*, That he is a Fisher to his Trade, and is one of the Subtacksmen, under Mr. *Duncan*, of the *Pyroad* Fishing: That he thinks, that, providing the Fishers upon both Sides had no Inclination to harm one another, they may both fish in their ordinary Course, without doing any Prejudice to each other, by stopping of their Work: That the *Sleples* Fishers could neither make use of more Boats, nor take more Shots than they do, although there were no Fishing in the *Pyroad*: That the *Pyroad* Shots being much shorter, and the Lead lying near them, they can make their Shot in much shorter Time than the *Sleples* Fishers; but thinks, if they were to take two Shots for the *Sleples* Fishers one, it would hinder the *Sleples* Fishers a little; and that therefore it is not the Practice to do it: That if the *Pyroad* Fishers had a mind, upon seeing a Warp in the Lead, as they lie nearer it, they could row in before the *Sleples* Fishers could possibly come at it; but that the Deponent never saw them do this out of their Turn: That sometimes, when the Fish are slack, the Fishers of one Side do not mind, nor give themselves any Trouble, though the other take a Shot or two out of their Turn; but that when the Water is in case for both, and the Fish plenty, both Sides keep regularly to their Turns: That the common Method is, for the second *Sleples* Boat to set out from the Shot-head, when they begin to lay on the Net on the first, at such Times as they are fishing by themselves, and not fishing on the other Side; but that when the Boats are fishing on both Sides, the first *Pyroad* Boat generally sets out at or before the *Sleples* Boat has hauled her Net; and that the second *Sleples* Boat sets out from the Shot-head about the
Time

Time the *Pyroad* Boat begins to luck or take in the Head-rope, and has generally compassed her Shot before the *Pyroad* Net is fully hauled: That when the Water is very clear and low, they believe it is for the Advantage of all Parties to take a little Breathing betwixt each Shot; but that for ordinary, the Deponent does not think the *Sleples* Boat suffers any Damage by coming immediately on the Back of the *Pyroad* Boat, because they very often take a great Number of Fishes when the *Pyroad* Boat takes none; and this, the Deponent believes, may be owing to the Situation of the Ground where the Water runs, by which it may happen that a considerable Number of Fish may be skelled, or may escape out of the *Pyroad* Net, which are afterwards picked up by the *Sleples* Net. *And deponed*, That the *Sleples* Boats begin sometimes two Hours at the back-going Tide before the Water is in Ply for the *Pyroad* Boats; but that he cannot say that they do not take as many Fish after the *Pyroad* Boats begin, as they did before, and sometimes he has seen them take more. *Deponed*, with respect to the Tide-shot, That when they first come upon it, they fish by turns, as the Shots would interfere with one another; but when the Tide has rose a little higher, then they can both fish together, their Shots being independent, and the Boats lie along-side one another, with the Backs of the Nets to each other, as described in the Plan; and that the Tide drives away the *Sleples* Fishers for the most Part some time before the *Pyroad* Fishers, who fish a little later. *Deponed*, That on *Friday* last, when Mr. *Winter* was looking at them, they did not go so far up as they used in the first of the Tide-shots, on account of the Stone marked Number 9. in the Map, which stands lowest in the Water; and which having been lately raised by the *Sleples* Nets, was in danger of tearing the *Pyroad* Nets, if they had gone any further up. *Deponed*, That the Method of Fishing has continued the same ever since the *Pyroad* Fishing was set a-going; but that the *Pyroad* Fishing has been cleaned, which has enabled the *Sleples* Nets to take a larger Shot, and
with

with less Danger than they used to do formerly: For that, in the Beginning of the Tide, while he was in use to fish *Sleples*, they were sometimes at a Loss where to set down their Nets through the Roughness of the Ground. *Deponed* conform to *Andrew Jack*, with regard to the uppermost Stone marked Number 9. in the Map. *And further deponed*, That he was one of the Subtacksmen of the Town of *Perth* upon *Sleples* about seven or eight Years ago, when the *Pyroad* Fishing was set a-going: That he remembers the rest of the Tacksmen and he were not well pleased that it was set a-going, and would rather have wished that it had not been; but is pretty sure that they did not at that Time, get any Ease, though he does not remember whether or not they communed among themselves about it. *Causa scientie*, That the Deponent fished at the *Sleples* Fishing near the Space of eighteen Years, some Part of which he was Sub-tacksmen, and since that he has been two Years Sub-tacksmen of the *Pyroad* Fishing.

Wit. 4. p. 16. *James Sanders* in *Sornie*, aged 30 Years and upwards, *deponed*, That he thinks the Fishing at the *Pyroad* does no ways hinder or stop the *Sleples* Boats in their Way of working, or making of Shots; but that as they both sweep the same Ground in some Part of their Shot, he takes it in general, that it is no Advantage for any Fishing, that there is another Fishing in the same Place. *Depones*, That some Years ago, there was a good deal of Pains taken to clean the *Pyroad* Fishing of Stones, which he thinks did Service to the Fishing on both Sides; and that he remembers the *Sleples* Nets used to be more frequently tore before the cleaning of the Fishing, than they have been since: That, in their ordinary Rate of Fishing, they take Shot and Shot about; and, when the Fish were not plenty, they were not anxious, though one Party took a Shot or two out of their Turn; and does not remember to have seen them take a Shot out of their Turn, even suppose they saw a Warp, except when the others would either agree to it, or refused to take their Turn. *Deponed*, That at certain Times.

Times of the Tide, the *Sleples* Fishers are in use sometimes to take up both their Boats, and sometimes one, to the upper Shot, during which the *Pyroad* Fishers continue there with both their Boats; and when they have two Boats to one of the *Sleples* Side, they, for the most part, take two Shots to their one; but never the less, if the *Sleples* Boat can be up time enough at the Shot-head, they never hinder her to take her Shot in Course between each of their Boats. *Deponed*, with regard to the Tide-shot, That, within this short Time, there has been a Stone which has prevented the *Pyroad* Fishers from fishing so far up the two or three first Shots of the Tide as they used to do; and that it is only of late that they suffered any Loss by that Stone. And *deponed*, That ever since the *Pyroad* was set a-going, they have fished Shot and Shot about, in the same Way as they do just now, without interfering. *Causa scientie*, That he has lived all his Life in the Neighbourhood, was for some time a Fisher on the *Sleples* Side, and is just now a Subtacksman of the *Pyroad* Fishing.

Thomas Sanders, in *Burn of Kinfauns*, aged 36 Years, *de-Wit. 5. p. 18.* *poned*, That since they began to fish in the *Pyroad*, within these seven or eight Years, the *Kinfauns* People have cleaned the Ground by taking out a great many Stones; and that he thinks the Fishing upon *Sleples* has received some Advantage by this, because, since the Ground was cleaned, they have taken a better Stroke of the Water; that is, made a better Shot than they did formerly, by coming a little farther down the Water; but that they came as far over formerly as they do now. And *deponed*, with regard to the Reason why the Tide-shot was not fished on *Friday* last, the same Way that it used to be, conform to *Alexander Imrie*. And as to the general Question, Whether the *Sleples* Fishing is prejudiced or hurt by the Fishing at the *Pyroad*? *deponed*, That he thinks they need not interfere as to their Manner of Working; but that with regard to the Quantity of Fish, he cannot be sure; because that, since the *Pyroad* Fishing began, the *Sleples* Fishers have got

very considerable Quantities of Fish, perhaps as good, and as many of them, as ever they had before; but, for any thing he knows, that may be owing to the Fish being more plenty in the Water since, than they were formerly. And further deponed, That ever since the *Pyroad* Fishing was set a-going, and cleaned, they have been in use to fish Shot and Shot about, in the same Manner as they do at present, without interfering. *Causa scientie*, That he has lived in the Neighbourhood all his Life, was for several Years a Fisher on the *Stock-green*, a little above the Fishing in dispute, and is presently a Sub-tacksmen of the Fishing of *Pyroad*.

Wit. 6. p. 20. *John Ross*, Merchant in *Perth*, aged 26 Years, deponed, That the whole Town's Fishings, except the *Ships*, was taken by *Thomas Richardson Baker*, for the Behoof of the Deponent's Father, and some others, from *Martinmas 1741* to *Martinmas 1744*; to which Company the Deponent acted as Clerk; and that the Fishing of *Sleples* and *Incherray* was sublet by that Company for the Year 1742, at 1100 Merks; and the Reason of setting it so low was, that the Sub-tacksmen or Fishers were very much frightened, by Baillie *Alison's* having set *Lord Gray's* Fishing, opposite to *Sleples*, to some other Fishers; and that they imagined the *Sleples* Fishing would be prejudiced by it; and that, in the following Years, when it did not come out to be so detrimental as they were afraid of, the Rent was raised to 1300 Merks. And further deponed, That, besides setting the Fishing for the first Year at the lower Rent, they were likewise obliged to pay them forty Pence more upon the Score of the Summer-fish. And further deponed, That he believes most of the present Sub-tacksmen of *Sleples*, were likewise Sub-tacksmen at and before that Time. *Causa scientie patet.*

Wit. 7. p. 21. *William Gray*, Merchant, one of the present Baillies of *Perth*, aged 50 Years, deponed, That he, in Company with *Thomas Young*, are at present principal Tacksmen, or at least *Thomas Young* Tacksmen, and the Deponent Cautioner, for the *Sleples*.

Sleples and several other Fishings belonging to the Town of *Perth*; and that the Fishing of *Sleples* is subbet by them at present at the rate of 1400 Merks yearly; and that he believes the Sub-tacksmen are the same that have been there for several Years past. And further *deponed*, That the principal Tack to Mr. *Young* bears a Clause, That there is to be no Deduction allowed on account of any Damage that may be sustained on the *Sleples* Fishing through the Fishing in dispute at the *Pyroad*. And being interrogate for the Pursuers, *deponed*, That he knows no other Reason for the Rent of *Sleples* Fishing being raised, than that the Fishes have of late been more plentiful in the Water of *Tay* than formerly; and that they have likewise raised the Rent of their Fishings on the same account. *Causa scientie patet, &c.*

Thomas Young, Merchant in *Perth*, aged 30 Years and up-wards, *deponed* conform to *William Gray* the preceeding Witness, except as to the Interrogatory for the Pursuers. *Causa scientie patet.* Wit. 8. p. 23.

With all which there was great Avisandum made, and the Term circumduced, at either Party's Instance against the other, upon the 9th June 1749; and which the Lord Preparer remits to the Lords at advising.

JO. SINCLAIR.

